

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

KEVIN FERNANDEZ,

Plaintiff,

v.

BRET JACKSON et al.,

Defendants.

3:13-cv-00670-RCJ-WGC

ORDER

I. DISCUSSION

On April 3, 2014, this Court denied Plaintiff's application to proceed *in forma pauperis* and dismissed his complaint, with prejudice, as amendment would be futile, for failure to state a claim. (ECF No. 3 at 6-7). The Clerk of Court entered judgment the same day. (ECF No. 5). Plaintiff appealed. (ECF No. 6). On August 4, 2016, the Ninth Circuit Court of Appeals affirmed in part, reversed in part, vacated in part, and remanded. (ECF No. 16 at 4).

In light of the Ninth Circuit's order, the Court now finds that Count I, alleging retaliation, shall proceed against Defendants Jackson and Marikami but grants Plaintiff leave to amend Count I in order to give Plaintiff an opportunity to allege sufficient facts to demonstrate retaliation against the other defendants. (*Id.* at 2). The Court now finds that Count II, alleging due process violations, shall proceed against Defendants Serrano and Jackson to the extent that Plaintiff is alleging that he was subjected to mental health treatment against his will. (*Id.* at 3). The Court now finds that Plaintiff's state law claims may proceed under supplemental jurisdiction. (*Id.* at 4).

Plaintiff is granted leave to file an amended complaint to cure the deficiencies of his retaliation claim. If Plaintiff chooses to file an amended complaint he is advised that an amended complaint supersedes (replaces) the original complaint and, thus, the amended

1 complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard Feiner & Co.,*
2 *Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party was named in the
3 original complaint is irrelevant; an amended pleading supersedes the original”); see also *Lacey*
4 *v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with
5 prejudice, a plaintiff is not required to reallege such claims in a subsequent amended
6 complaint to preserve them for appeal). Plaintiff’s amended complaint must contain all claims,
7 defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit. Moreover,
8 Plaintiff must file the amended complaint on this Court’s approved prisoner civil rights form and
9 it must be entitled “First Amended Complaint.”

10 The Court notes that if Plaintiff chooses to file an amended complaint curing the
11 deficiencies, as outlined in this order and the Ninth Circuit’s order, Plaintiff shall file the
12 amended complaint within 30 days from the date of entry of this order. If Plaintiff chooses not
13 to file an amended complaint curing the stated deficiencies, Plaintiff must notify the Court
14 within 30 days from the date of this order that he chooses to proceed on Count I against
15 Defendants Jackson and Marikami, Count II against Defendants Serrano and Jackson, and
16 Counts III, IV, V, VI, and VII through supplemental jurisdiction. If Plaintiff does not either file
17 an amended complaint or file a notice informing the Court of his intent to proceed with this
18 case without filing an amended complaint, the Court shall dismiss this case with prejudice.

19 **II. CONCLUSION**

20 For the foregoing reasons, IT IS ORDERED that the application to proceed *in forma*
21 *pauperis* (ECF No. 1) is reinstated. The Court now defers a decision on the application to
22 proceed *in forma pauperis* (ECF No. 1).

23 IT IS FURTHER ORDERED that if Plaintiff chooses to file an amended complaint curing
24 the deficiencies of his complaint, as outlined in this order and the Ninth Circuit’s order, Plaintiff
25 shall file the amended complaint within 30 days from the date of entry of this order.

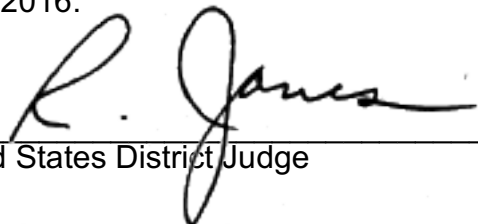
26 IT IS FURTHER ORDERED that the Clerk of the Court shall send to Plaintiff the
27 approved form for filing a § 1983 complaint, instructions for the same, a copy of his original
28 complaint (ECF No. 4), a copy of this Court’s original screening order (ECF No. 3), and a copy

1 of the Ninth Circuit's order (ECF No. 16). If Plaintiff chooses to file an amended complaint,
2 he must use the approved form and he shall write the words "First Amended" above the words
3 "Civil Rights Complaint" in the caption.

4 IT IS FURTHER ORDERED that if Plaintiff chooses not to file an amended complaint,
5 he must file a written notice informing the Court of his intent to proceed with this case without
6 filing an amended complaint. If Plaintiff chooses to file such a notice, this case shall proceed
7 on Count I against Defendants Jackson and Marikami, Count II against Defendants Serrano
8 and Jackson, and Counts III, IV, V, VI, and VII through supplemental jurisdiction.

9 IT IS FURTHER ORDERED that if Plaintiff fails to either file an amended complaint or
10 notify the Court of his intent to proceed with this case within 30 days from the date of this
11 order, the Court shall dismiss this case with prejudice.

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13 DATED: This 16th day of September, 2016.

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16 United States District Judge
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